

NORTH HARTLAND, LLC,)	AGBCA No. 2003-175-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Robert L. Carey, Jr.)	
Managing Member)	
North Hartland LLC)	
P. O. Box 1107)	
Great Falls, Virginia 22066)	
)	
Robert L. Carey, Jr.)	
Managing Member)	
North Hartland LLC)	
c/o The Baltimore Marine Center)	
2738 The Lighthouse Point East)	
Baltimore, Maryland 30122 ¹)	
)	
Representing the Government:)	
)	
Helen C. Harris, Esquire)	
Office of the General Counsel)	
U. S. Department of Agriculture)	
Room 4343, South Building)	
1400 Independence Avenue, S.W.)	
Washington, D.C. 20250-1400)	

BOARD RULING ON JURISDICTION

February 3, 2004

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge WESTBROOK.

On July 23, 2003, the Board received a letter from North Hartland LLC, of Great Falls, Virginia,

¹ As result of difficulties experienced in sending certified mail to Mr. Carey at North Hartland LLC's address of record in Great Falls, Virginia, Mr. Carey furnished a second address in Baltimore. This ruling is being sent to him at both addresses.

subject "Contract Dispute & Bad Faith Conduct." The letter noted that it pertained to an Asset Purchase Agreement (APA), which did not stipulate that the Board of Contract Appeals has jurisdiction. The APA recites that it is by and between the Administrator of the Rural Utilities Service (RUS), Contech Development Company, LLC (CDC), the Vermont Electric Generation & Transmission Cooperative, Inc. (VEG&T), acting through Gleb Glinka, Esq., the Chapter 7 Trustee of the VEG&T bankruptcy estate (Transferor).

The Board docketed the appeal but noted in its docketing letter that the documents submitted to the Board did not indicate that a Contracting Officer's (CO's) decision had been issued. Both parties were requested to address the issue of jurisdiction before further proceedings were scheduled.

Appellant, which was represented by its Managing Member, replied in a letter dated September 3, 2003, that it would leave the matter of jurisdiction to its attorney but would request the assistance of the Board in "sponsoring mediation, third-party neutral or conciliation." The letter also stated that it was not aware of a CO having any responsibility concerning the APA. No attorney for North Hartland has entered an appearance before the Board.

The Government's Motion to Dismiss for Lack of Jurisdiction was received at the Board October 10, 2003. The Government contends that the APA at issue is outside the scope of the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 601-613, as amended, and that the Board therefore lacks jurisdiction.

Thereafter, the Board conducted a telephonic conference with the parties on October 29, 2003. The purpose of the conference was to review the status of the appeal, particularly the issue of jurisdiction. In response to the Board's question whether Appellant intended to address jurisdiction, Appellant's representative, Mr. Carey, stated that he had been unsure from the outset whether the Board had jurisdiction. He stated that his initial letter to the Board was because he was seeking (1) a determination whether the Board had jurisdiction and (2) he wished to employ alternative disputes resolution (ADR). He stated that he did not intend to make a formal appeal. He stated that an action regarding the same underlying facts is now pending at the Federal Energy Regulatory Commission. He also stated that he has a related matter pending in civil rights channels of the U.S. Department of Agriculture. He expressed his understanding that ADR would be compulsory in those channels.

The presiding judge stated that the following choices existed as to the appeal at the Board: (1) Appellant could provide argument in support of jurisdiction and the Board could decide the issue; (2) the Board could decide jurisdiction without input from Appellant; and (3) Appellant could request the appeal be dismissed. Appellant expressed the intent to write the Board seeking dismissal without prejudice.

The Board has received no request for dismissal from Appellant, nor has Appellant provided any additional argument regarding jurisdiction. The Board has not independently found a basis for jurisdiction.

Appellant bears the burden of establishing that the Board has jurisdiction over this matter. Jim Baker, AGBCA No. 99-120-1, 99-2 BCA ¶ 30,411; Trent-Jones, Inc., AGBCA No. 98-104-1, 99-1 BCA ¶ 30,196. Appellant has failed to carry that burden.

RULING

The appeal is dismissed for lack of jurisdiction.

ANNE W. WESTBROOK
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

**Issued at Washington, D.C.
February 3, 2004**